

Exhibit D

Transcript of the Testimony of

[REDACTED]

Date:

February 02, 2021

Case:

Students for Fair Admissions vs University of Texas

February 02, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

STUDENTS FOR FAIR)
ADMISSIONS, INC.,)

Plaintiff,)

CIVIL ACTION

VS.)

NO.: 1:20-cv-00763-RP

UNIVERSITY OF TEXAS AT)
AUSTIN,)
ET AL.,)

Defendants.

ORAL AND VIDEOTAPED DEPOSITION OF

████████████████████
FEBRUARY 2, 2021

VOLUME #1

ORAL AND VIDEOTAPED DEPOSITION OF ██████████

██████████, produced as a witness at the instance of
the DEFENDANT, and duly sworn, was taken in the
above-styled and numbered cause on February 2, 2021,
from 9:35 a.m. to 11:48 a.m. via Zoom before Miah
Hoffman, CVR in and for the State of Texas, reported by
oral stenography, pursuant to the Federal Rules of Civil
Procedure and the provisions stated on the record or
attached hereto.

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KTA HOST: DEA BROWN

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EXHIBITS

* There were no exhibits to this deposition

CERTIFIED QUESTIONS

NO.		PAGE/LINE
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P R O C E E D I N G S

REPORTER: We are on the record. Today's date is February 2nd, 2021. The time is 9:35 a.m. This is the oral deposition of [REDACTED], and it is being conducted remotely by agreement of the parties or in accordance with current Emergency Orders. The witness is attending from [REDACTED].

My name is Miah Hoffman, CVR #7859 with Kim Tindall & Associates. I am administering the oath and reporting the deposition remotely by oral stenographic means.

My business address is 16414 San Pedro Avenue, Suite 900, San Antonio, Texas 78232. The witness has been identified to me through attestation of his counsel.

Would counsel please state their appearances for the record?

MR. MCKETTA: This is Mike McKetta for defendants.

MR. POWERS: Matt Powers also for defendants.

MR. CONNOLLY: Michael Connolly for the plaintiff.

MS. SIMPSON: Carter Simpson for the

1 defendant, Intervenors.

2 MR. HINOJOSA: David Hinojosa for the
3 Intervenors.

4 (Witness duly sworn.)

5 [REDACTED],
6 having been first duly sworn, testified as follows:

7 EXAMINATION

8 BY MR. MCKETTA:

9 MR. MCKETTA: Thank you. Mike do you
10 want to just incorporate the stipulations that you
11 recited yesterday or do you want to repeat them?

12 MR. CONNOLLY: Yeah. Would you mind if I
13 repeated them?

14 MR. MCKETTA: Fine.

15 MR. CONNOLLY: So this -- these are the
16 stipulations that the parties agreed to before -- before
17 the deposition. During this deposition it is possible
18 that UT or the Intervenors will ask questions that SFFA
19 believes infringe upon the First Amendment associational
20 rights of SFFA and its members. SFFA may instruct the
21 witness not to answer a question on these grounds. If a
22 disagreement arises as to whether this instruction is
23 improper, the parties agree to do their best to resolve
24 the disagreement during the deposition or if necessary,
25 before the Court. SFFA agrees that UT and the

1 connection just -- y'all bear with me.

2 REPORTER: Did y'all want to stay on the
3 record or go off the record?

4 MR. MCKETTA: Off the record. Thank you.

5 REPORTER: The time is 9:40 a.m. and we
6 are off the record.

7 REPORTER: The time is 9:45 a.m. and we
8 are back on the record.

9 Q. (BY MR. MCKETTA) Thank you. [REDACTED]
10 does the percentile of 82 or 83 percent for your class
11 ranking, that is the top 17 or 18 percent of your
12 graduating class sound approximately correct?

13 MR. CONNOLLY: Objection to the form.

14 THE WITNESS: Yes, roughly.

15 Q. (BY MR. MCKETTA) I'm gonna cover primarily
16 four topics as we talk today. One I'm gonna ask you
17 about: Questions about your relationship with SFFA.
18 One I'm gonna ask you about: Your current academic
19 performance at [REDACTED]. One, I'm gonna ask you about
20 the admissions process and then I'm gonna ask some
21 questions about this lawsuit. So that's generally where
22 we're headed and I may be disorganized enough to digress
23 from time to time, but that's generally the way. You're
24 currently a member of SFFA and the records that we were
25 given indicated that you joined on January 28, 2019.

1 MR. CONNOLLY: Objection to the form.

2 THE WITNESS: I'm not sure about the
3 timeframe, but yes, I did apply for appeal.

4 Q. (BY MR. MCKETTA) Okay. And that appeal was
5 then denied shortly afterwards?

6 A. Yes.

7 Q. Did you have any communication with anybody at
8 University of Texas about that appeal other than your
9 written submission and then the electronic communication
10 you received back?

11 MR. CONNOLLY: Object to the form.

12 THE WITNESS: I think my family had a few
13 angry phone calls, but I don't believe there's anything
14 other than that.

15 Q. (BY MR. MCKETTA) Do you know -- know with
16 whom?

17 A. No, probably -- whatever number's on the
18 website.

19 Q. Okay. Both of your parents were college
20 graduates. I think your father has a professional
21 degree. Was either at the University of Texas?

22 A. My father's undergraduate degree was at the
23 University of Texas and he was a [REDACTED].

24 Q. Do you know whether or not your father is
25 familiar with Ed Blum?

1 he's a member of [REDACTED].

2 MR. CONNOLLY: Yes, I'm instructing the
3 witness not to answer that question.

4 MR. HINOJOSA: Well, we'll certify the
5 question -- oh, well -- can you verify -- sorry, Carter.
6 Can you verify with the witness whether or not he's
7 gonna follow his attorneys' instructions on that?

8 MS. SIMPSON: Will you follow your
9 attorneys' instruction to not answer the question as to
10 whether you participated in [REDACTED]?

11 THE WITNESS: That's generally what we're
12 supposed to do here so, yes.

13 Q. (BY MS. SIMPSON) All right, thanks. And now,
14 we'll move on. I'd like to talk a bit more about your
15 background before UT and about, kind of your self
16 identification. What race do you identify with?

17 A. White.

18 Q. Is that white non-Hispanic?

19 A. Yes.

20 Q. Are you a native English speaker?

21 A. Yes, ma'am.

22 Q. What about your parents? What race -- your bi
23 biological parents. What race do they identify with?

24 A. White.

25 Q. And are they both native English speakers?

1 A. Yes, ma'am.

2 Q. And is that white non-Hispanic for them as
3 well?

4 A. Yes, ma'am. Sorry for the nodding.

5 Q. And were you raised by both parents?

6 A. Yes, ma'am.

7 Q. Are they still married?

8 A. Yes, ma'am.

9 Q. Could you -- what was your SAT score in high
10 school?

11 A. My SAT score I didn't actually submit to UT
12 ever.

13 Q. Okay. Did you submit your ACT score?

14 A. Yes, ma'am.

15 Q. What --

16 A. I think -- I think it was a 1500 though. I --
17 I'm not positive.

18 Q. What about your ACT score?

19 A. My ACT was a 36.

20 Q. 36?

21 A. Yes, ma'am.

22 Q. Good job. And did you participate in any SAT
23 prep?

24 A. No ma'am.

25 Q. Did you participate in any ACT prep?

1 on that.

2 Q. Okay. You said you attended [REDACTED]
3 [REDACTED] for high school, is that correct?

4 A. Yes, ma'am.

5 Q. Do you know the cost of tuition at [REDACTED]
6 [REDACTED]?

7 A. \$19,000 when I went before -- before
8 scholarships.

9 Q. Did you receive any need-based financial aid?

10 A. No, ma'am.

11 Q. And who paid for your tuition in high school?

12 A. My family did.

13 Q. You mentioned that you had a job for part of
14 high school. Did you contribute to your tuition?

15 A. Aside for paying for myself more, no.

16 Q. What public school for -- were you zoned for?

17 A. [REDACTED].

18 Q. I'm sorry. Did you say [REDACTED]?

19 A. Yes, ma'am. It was in the [REDACTED].

20 Q. Could you walk me through how you chose to
21 attend the private high school that you attended instead
22 of [REDACTED]?

23 MR. CONNOLLY: Objection to the form.

24 THE WITNESS: Yes, ma'am. I -- let me
25 think. I went to public school for a few years and my

1 family thought that I was getting dumber as they said
2 it. They sent me to a private middle school -- [REDACTED]
3 school and then they wanted -- they were go -- deciding
4 between [REDACTED] and they liked the
5 [REDACTED] -- the -- well, the [REDACTED] -- really
6 their morals and they thought they had a good background
7 education so they sent me there instead.

8 Q. (BY MS. SIMPSON) Okay. Thanks. When applying
9 for college, do you know if you were eligible for a Pell
10 grant?

11 A. I don't think I was.

12 Q. Did --

13 A. I would hope I wasn't.

14 Q. Did you apply for need-based financial aid,
15 when applying for college?

16 A. No ma'am.

17 Q. And -- are -- do you know what the tuition --
18 your -- your tuition is at [REDACTED]?

19 A. Free.

20 Q. Oh, so did you receive a merit's financial aid
21 to attend [REDACTED]?

22 A. Yes, ma'am.

23 Q. And could you tell me about that award?

24 MR. CONNOLLY: Objection to the form.

25 THE WITNESS: Yes, it's -- as a [REDACTED]

1 [REDACTED], [REDACTED] offers scholarships that make tuition
2 -- pay for tuition, but I still pay for housing and
3 food.

4 Q. (BY MS. SIMPSON) Okay. And who pays for
5 housing and food -- who -- where does the funds come to
6 pay for housing and food?

7 A. My parents and grandparents.

8 Q. Do -- do you have a -- maintain a job during
9 the school year?

10 A. Last semester I was a TA; this semester there
11 were no opportunities for that, so this semester I don't
12 have a job, no.

13 Q. Okay. All right. Thank you for that. I did
14 have one final topic to cover. Does anybody need a
15 break before we -- okay. Earlier we discussed some of
16 the essays in your college application. Other than the
17 guidance in the prompt, did you feel restricted in any
18 way regarding what you could write in your essays?

19 MR. CONNOLLY: Objection to the form.

20 THE WITNESS: I don't really understand
21 what you mean by that.

22 Q. (BY MS. SIMPSON) Do you recall seeing any
23 restriction about what information you could provide in
24 your essays?

25 A. Restriction by who?

1 Q. By the -- did the application mention any
2 restriction about the subject matter you could write
3 about other than the prompt?

4 A. I think it mentioned something about sexual
5 assault and being legally obligated to report it. I
6 don't think there were any other restrictions.

7 Q. Okay. Thank you. In listing your
8 accomplishments elsewhere in your application, do you
9 recall seeing any restrictions about the type of
10 accomplishments you could mention?

11 A. I don't think so. I don't recall.

12 Q. In the essay portion of the college
13 application, do you think it's important for students to
14 be able to communicate their experiences fully?

15 MR. CONNOLLY: Objection to the form.

16 THE WITNESS: No, I don't think so
17 because no one can ever communicate their full
18 experience. It's an impossibility.

19 Q. (BY MS. SIMPSON) Other than -- than self
20 inability to fully communicate yourself, do you believe
21 that the applications should not restrict student's
22 ability to express themselves fully --

23 MR. CONNOLLY: Objection.

24 MS. SIMPSON: -- in college --

25 MR. CONNOLLY: Objection.

1 MS. SIMPSON: -- essays?

2 MR. CONNOLLY: Sorry. Objection to the
3 form.

4 THE WITNESS: I haven't really thought
5 about it, but yeah I don't think the college should
6 restrict your ability to say whatever you want in your
7 application.

8 Q. (BY MS. SIMPSON) If an applicant would like to
9 describe an experience that somehow reveals his or her
10 race in the essay portion, is it your position the
11 applicant should be barred from doing so?

12 MR. CONNOLLY: Objection to the form.

13 THE WITNESS: I would say no, they
14 shouldn't be barred from that.

15 Q. (BY MS. SIMPSON) Is it your position that if
16 an applicant does choose to write about race in the
17 essay portion, should that portion of the admissions
18 department before its review?

19 MR. CONNOLLY: Objection. And counsel
20 are you -- you're asking his own personal belief you're
21 not asking him to speak on behalf of SFFA, correct?

22 MS. SIMPSON: That's correct.

23 MR. CONNOLLY: Okay. Can--- can you
24 please restate the question?

25 MS. SIMPSON: No, I think it was stated

1 the way I wanted to state it --

2 Mr. CONNOLLY: I didn't mean to say
3 restate, I meant --

4 THE WITNESS: Say it again.

5 Q. (BY MS. SIMPSON) Sure. Is it your position
6 that if an applicant does choose to write about an
7 experience that reveals his or her race in the essay,
8 that that portion should then be redacted by the
9 admissions department before its review of the
10 application?

11 MR. CONNOLLY: Objection to the form.

12 THE WITNESS: That's a difficult
13 question. I think -- well, I'm generally against
14 censoring anything at all -- that fears a little too
15 close to the French model of just absolutely blind for
16 me. So I would say no, they shouldn't censor it post --
17 postmortem. That would be worse than saying you
18 shouldn't write about race at all for sure.

19 Q. (BY MS. SIMPSON) That's a good point. If an
20 applicant needs to disclose his or her race when listing
21 student organizations, leadership positions, or awards
22 earned in high school, is it your position that the
23 applicant should be barred from doing so?

24 MR. CONNOLLY: Objection to the form.

25 THE WITNESS: I don't think so, no.

1 Q. (BY MS. SIMPSON) Is it your position that if
2 an applicant reveals his or her race in the list of
3 awards, student organizations, or leadership positions,
4 those awards and achievements should be redacted by the
5 admissions department before its review of the
6 application?

7 MR. CONNOLLY: Objection to the form.

8 THE WITNESS: I don't think so, no.

9 Q. (BY MS. SIMPSON) So -- and just so I kind of
10 understand your position. So long as race is not a
11 factor in UT admissions decision, you don't have a
12 problem with students being able to disclose their race
13 in their applications?

14 MR. CONNOLLY: Objection to the form.

15 THE WITNESS: Yeah, because I think it's
16 a lot like an interview. You can't hide your race in an
17 interview. So as long as it's not a factor in the
18 decision, I think that's fine, yeah.

19 MS. SIMPSON: Okay. And that's all I
20 have for you. Thank you very much, [REDACTED].

21 MR. CONNOLLY: Thanks. I will have a few
22 follow-up questions and we can take a quick break and
23 Carter, just -- you know, in the interest of making sure
24 I'm not making a mistake, can you -- question I promised
25 to think about during the break, what was that again?

1 What was the two you want -- there was: Are you a
2 member of [REDACTED]; the other one was --

3 MS. SIMPSON: Have you ever participated
4 in any [REDACTED].

5 MR. CONNOLLY: No, sorry. The -- this
6 is the one we got in a -- an argument about -- about the
7 -- about his friends -- just so I know -- just so I

8 -- MS. SIMPSON: Oh. Which friends at -- at
9 -- [REDACTED] has he told that he's considering
10 transferring to UT.

11 MR. CONNOLLY: Okay.

12 REPORTER: All right. The time is 11:23
13 a.m. and we are off the record.

14 (Break.)

15 REPORTER: All right. The time is 11:41
16 a.m. and we are back on the record.

17 BY MS. SIMPSON:

18 Q. [REDACTED], I'm -- I -- this is Carter Simpson
19 again. I just have two more questions and thank you for
20 -- to you and your counsel for indulging me quickly.
21 You mentioned you did not think you -- your family or
22 you were eligible for a Pell grant; is that correct?

23 A. Yes, ma'am.

24 Q. Do you know or can you approximate your
25 family's income?

1 A. I'm not sure. Let me think. I -- I really
2 have no ideal to be perfectly honest.

3 Q. Do you know if it's above \$200,000 a year?

4 A. I'm not sure. Prob --

5 Q. Do you know if it's above -- oh, sorry.

6 A. It's above a \$100,000 a year, but I'm not sure
7 if it's above \$200,000 a year.

8 Q. Okay. Thank you. And my final question, have
9 you met with your counsel during any of the breaks today
10 during the deposition?

11 A. Yes.

12 Q. Have you met in person with your counsel?

13 A. Uh-huh.

14 Q. And did you discuss the subject -- the
15 substance of your testimony today with your counsel?

16 A. No. Outside of the two questions that I will
17 -- that Mr. Connolly's gonna talk about, no.

18 Q. So you did discuss what Mr. Connolly will be
19 asking you?

20 A. No. Outside of the two -- Mr. Connolly and
21 you had an -- a little argument about, outside of those
22 two, no.

23 MS. SIMPSON: Okay. All right. Thank
24 you very much, [REDACTED].

25 THE WITNESS: Yes, ma'am.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

STUDENTS FOR FAIR)
ADMISSIONS, INC.,)

Plaintiff,)

CIVIL ACTION

VS.)

NO: 1:20-cv-00763-RP

UNIVERSITY OF TEXAS AT)
AUSTIN,)
ET AL.,)
)

Defendants.

REPORTER'S CERTIFICATE
OF [REDACTED]

I, Miah Hoffman, CVR, do hereby certify that the
foregoing deposition is a full, true and correct
transcript;

That the foregoing deposition of Witness,
[REDACTED], the Witness, hereinbefore
named was at the time named, taken by me in oral
stenograph on February 2, 2021, the said Witness having
been by me first duly cautioned and sworn to tell the
truth, the whole truth, and nothing but the truth, and
the same were thereafter reduced to typewriting by me or
under my direction. The charge for the completed
deposition is \$ _____ due from Defendant;

() That pursuant to the Federal Rules of Civil procedure, the Witness shall have 30 days after being notified by certified mail, return receipt requested, by the deposition officer that the original deposition transcript is available in her office for review and signature by the Witness and if any corrections made are attached hereto;

() That by agreement of counsel, a reading condensed copy of the deposition transcript along with the full-sized original Changes and Signature Sheet has been sent to _____ on _____ for review and signature within 30 days and if any corrections returned are attached hereto;

() That by agreement of counsel, the deposition officer is instructed to release the original deposition transcript to _____ on _____ for review and signature, and the deposition officer is thereafter released of any further responsibility with regard to the original;

() That the witness shall have thirty (30) days for review and signature of the original transcript and if any corrections returned are attached hereto;

() That the signed transcript () was () was not received from the Witness within 30 days;

() That the examination and signature of the
Witness is waived by the Witness and the parties;

That the amount of time used by each party at
the deposition is as follows:

Mr. McKetta: 00 HOURS:52 MINUTE(S)
Ms. Simpson: 01 HOURS:30 MINUTE(S)
Mr. Connolly: 00 HOURS:01 MINUTE(S)

I further certify that I am neither counsel for,
related to, nor employed by any of the parties or
attorneys in this action in which this proceeding was
taken, and further that I am not financially or
otherwise interested in the outcome of the action.

Certified to by me this 5th day of February,
2021.



MIAH HOFFMAN, CVR 7859
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